

FILED

AUG 20 2013

Clerk, U.S. District Court
District Of Montana
Helena

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

UNITED STATES OF AMERICA,

Cause No. CR 04-130-BLG-SEH
CV 13-111-BLG-SEH

Plaintiff,

vs.

ORDER DENYING § 2255 MOTION
AND DENYING CERTIFICATE
OF APPEALABILITY

LEON MEIDINGER,

Defendant.

On August 16, 2013, Defendant Leon Meidinger filed a motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. Meidinger is a federal prisoner proceeding pro se.

As Meidinger was sentenced on May 10, 2006, Minutes (doc. 35), Meidinger's motion is untimely by well over six years, 28 U.S.C. § 2255(f)(1).

Further, his claims are meritless. He contends that imposition of a prison sentence as well as a term of supervised release constitutes double jeopardy. Mot. § 2255 (doc. 46) at 4. It does not. Supervised release is part of the same sentence as the prison term. 18 U.S.C. § 3583(a).

Meidinger also contends that Judge Cebull failed to state the reasons for the sentence, making it “hard for the defendant to possibly withdraw his plea and/or appeal.” Mot. § 2255 at 5. Judge Cebull would have stated his reasons on the record at sentencing.¹ The transcript has never been prepared because Meidinger did not appeal. Additionally, Meidinger pled guilty to six drug-related offenses involving more than 500 grams of a mixture containing methamphetamine. Judgment (doc. 37) at 1. He received the statutory mandatory minimum sentence of 120 months. 21 U.S.C. § 841(b)(1)(A)(viii). The conditions of his supervised release are the ones typically imposed on persons convicted of drug offenses in this District. Judgment at 3-4. The record indicates no basis for challenge, which would be grossly untimely in any case. The motion is denied.

A certificate of appealability is not warranted as Meidinger makes no showing whatever that he has been deprived of a constitutional right. 28 U.S.C. § 2253(c)(2).

ORDERED:


1. Meidinger’s motion to vacate, set aside, or correct his sentence (doc. for modification of his sentence (doc. 44) is DENIED.

¹ The “Statement of Reasons,” Form AO 245B, filed separately from the Judgment and under seal, was not used in this District until some time after Meidinger was sentenced.

2. A certificate of appealability is DENIED. The Clerk of Court shall immediately process the appeal if Meidinger files a Notice of Appeal;

3. The Clerk of Court shall ensure that all pending motions in this case and in CV 13-111-BLG-SEH are terminated and shall close the civil file by entering judgment in favor of the United States and against Meidinger.

DATED this 20th day of August, 2013.


Sam E. Haddon
United States District Court